IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

-

WRIT PETITION NO : 31522 of 1998

Between:

G. Koteswara Rao, S/o. G. Naghabhushanam, Divisional Engineer (Retd), A.P.S.E.B. Seshanivas, D.No. 12-10-530/129, Warisguda, Secunderabad.-61.

..... PETITIONER

AND

1. The A.P.S.E.B., Vidyut Soudha, Somajiguda, Hyderabad, rep. by its Member Secretary.
2. The Director (Personnel), A.P.S.E.B., Vidyut Soudha, Somajiguda, Hyderabad-4
3. The Superintending Engineer (Operation Circle), A.P.S.E.B. Mint Compound, Saifabad, Hyderabad-4.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pleased to issue a direction, order or writ more particularly one in the nature of writ of Certiorari, to (i) Call for all the relevant and connected records relating to the proceedings in Lr. No. DS(Estt)/AS(Pen) PO.II A1 995/98-6 dt. 14-10.198 of the 2nd Respondent and quash or set aside the same holding it as arbitrary, illegal, unjust, unsustainable and violative of Article14 of the Constitution of India. (ii) declare the action of the respondent Board in not considering the war Service rendered by the petitioner for the period from 26.12.1942 to 5.6.1944 in the A.G. Technological Institutes Vuyyur as an Assistant Fitter Instructor for the purpose of qualifying service for computation of pension as arbitrary, illegal, unjust and unsustainable and being violative of Art. 14 of the Constitution of India. (iii) direct the respondents to obtain necessary permission from the Government for condonation of the break in service from, 5.6.1944 to 14.3.1950and consider the war Service rendered by the petitioner

and also the break in service as qualifying service for the purpose of computing pensionary benefits of the petitioner, (iv). consequently direct the respondents to computer the arrears and release the same together with an interest @ 12% p.a. from the date the petitioner is entitled to receive the same till the actual date of payment of the arrears.

Counsel for the Petitioner: Mr. ABHINAND KUMAR SHAVILI

Counsel for the Respondent No1.: S.C. FOR AP TRANSCO.

The Court made the following :

ORDER:

This Writ petition is filed seeking a Writ of Mandamus to call for the records relating to the proceedings in Lr.No.DS (Estt)/AS(Pen)PO.II.A1 995/98-6 dated 14-10-1998 of the 2nd respondent and quash the same, holding it as arbitrary and illegal and further declare the action of the respondent-Board in not considering the War service rendered by the petitioner for the period from 26-12-1942 to 05-06-1944 in the A.G. Technological Institutes, Vuyyur as an Assistant Fitter Instructor for the purpose of qualifying service for computation of pension as arbitrary, and illegal, by directing the Government to condone the break in service from 05-06-1944 to 14-3-1950 and to consider the War service rendered by the petitioner and also the break in service as qualifying service for the purpose of pension.

It is stated in the writ affidavit that the petitioner was an Assistant Fitter Instructor of the Institute of A.G. Technological Institutes, Vuyyur during Second World War, between 23-12-1942 and 05-06-1944. Thereafter, he left the said post on 05-06-1944. The service rendered by him from 23-12-1942 to 05-06-1944 was a Military and War service. Six years thereafter, the petitioner was appointed in the service of the Andhra Pradesh State Electricity Board and retired on attaining the age of superannuation on 10-6-1974. The complaint of the petitioner is that the

service rendered by him between 23-12-1942 and 05-06-1944 must be counted for the purpose of retirement benefits, including the six years gap period before his appointment into the service of the Andhra Pradesh State Electricity Board by giving relaxation, so that, the entire period right from 1942 to 1974 could be taken for the purpose of computation of pension etc. In this regard, the learned counsel for the petitioner strenuously contends that a reading of Rules 20 and 54 of A.P. Revised Pension Rules, 1980 thereto, would make it clear that even if the gap was more than three years between relieving of the petitioner from the Army service and recruitment in the A.P.S.E.B. etc., the same could be condoned by invoking the provisions of Rule 54 of the Pension Rules. The said course of action was not adopted by the Board and they have passed the impugned proceedings, which is arbitrary and illegal.

A detailed Counter has been filed on behalf of the 1st respondent stating that the petitioner was not entitled for the relief sought for and there was nothing wrong in the impugned order passed by the A.P.S.E.B.

The learned counsel for the petitioner contends that as per Rule 20 of the A.P. Revised Pension Rules, 1980, which came into effect with effect from 29-10-1979, the break, if any, between the Military/War service and the Civil service shall be treated as automatically condoned, provided, the period of break does not exceed one year. If it exceeds one year, but not exceeding three years, the same can also be condoned in exceptional cases under special orders of the Government. Though in the instant case, it is more than three years, nothing prevents the authorities from sending the same to the Government to pass special Orders for condonation of the break in service for the purpose of computing pension etc. Such an exercise was never done by the authorities, which they are supposed to do. Further, even if the break in service in the Military/Army and Civil service was more than three years, the Board is empowered to seek relaxation by recommending the case of the petitioner to the Government for the purpose of computing that particular period for the purpose of pension etc. This provision was not invoked. The authorities simply rejected the case of the petitioner, saying that the break between the period from 05-06-1944 to 14-3-1950 was nearly six years and there was no provision for condoning the break in service beyond three years and in the absence of any provision, it is not possible to consider three years additional qualified service for the purpose of pension etc.

I have gone through Rule 20 of the A.P. Revised Pension Rules,1980,which came into effect from 29-10-1979 and also Rule 54 of the said Rules, which read as hereunder:

Counting of service rendered before Civil employment:-

1…..

2…..

(v) *The break if any between the Military/war service and the civil service shall be treated as automatically condoned provided the period of the break does not exceed one year. Breaks exceeding one year but not exceeding three years may also be condoned, in exceptional cases, under special orders of Government'.*

Power to relax:*'Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, Government may, by Order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner*

provided that no such Order shall be made except with the concurrence of the Finance and Planning (FW) Department'.

From the above, it is clear that if the break between the Military/War service and the Civil service was only one year, it stands condoned automatically. Whereas, if the break in service is beyond one year and within three years, that needs to be condoned under special Orders of the Government. That means, the authorities can recommend as a special case for condoning the three years gap between Army service and Civil service. In a case, where it is beyond three years, there is no provision under the law either for condoning or seeking special Orders from the Government for such condonation. Therefore, the contention of the learned counsel for the petitioner that even if it is more than three years, the Board ought to have invoked its powers and recommended the matter to the Government and it would be for the Government to proceed with the matter and not for the A.P.S.E.B. authorities. Therefore, the authorities have failed at the threshold in considering the recommendation for condonation of the gap between War service and the Military service. I am afraid, I cannot accede to the contentions of the learned counsel for the

petitioner, since the authorities can condone the gap, which is one year, automatically and they can also condone the same subject to the special Orders of the Government if the gap is more than one year and below three years (six years in this case). The authorities can neither recommend nor seek special Orders from the Government for condonation of the gap of six years for the purpose of computation of the said period for the pension etc.,

The learned counsel for the petitioner also contended that Rule 54 includes the power to seek relaxation of the rules, i.e., the rules made in Rule 20 of the A.P. Revised Pay Scales, wherein, there is no provision for condoning the gap which is more than three years. I am afraid, I cannot agree with the contentions raised by the learned counsel for the petitioner.

The learned counsel also contended that the Board failed to exercise the powers vested in it under Rule 54 read with Rule 20 of the A.P.Revised Pension Rules, 1980. I am of the considered opinion that there is no such procedure, which was required to be adopted by the Board.

The Writ petition is devoid of merits and is liable to be dismissed. It is accordingly dismissed. No costs.

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(C.V.RAMULU,J)

27-07-2004.

TSY

ASSISTANT REGISTRAR

//TRUE COPY //

SECTION OFFICER

1. The Member Secretary,

A.P.S.E.B., Vidyut Soudha,

Somajiguda, Hyderabad.
2. The Director (Personnel),

A.P.S.E.B., Vidyut Soudha,

Hyderabad-4.
3. The Superintending Engineer (Operation Circle),

A.P.S.E.B. Mint Compound, Saifabad, Hyderabad-4.

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